

Enclosure B

Special Conditions

1. Basis for Requiring Special Conditions

Pursuant to section 616(g) of Part B of the Individuals with Disabilities Education Act (IDEA or Part B) and 34 CFR §80.12, the Office of Special Education Programs (OSEP) is imposing Special Conditions on the Bureau of Indian Education's (BIE's) Federal fiscal year (FFY) 2011 grant award under Part B of the IDEA. OSEP is imposing these Special Conditions because of the BIE's failure to complete all of the corrective actions contained in Section C of the Program Improvement and Accountability Plan (PIAP). The objective of Section C of the PIAP is to ensure the BIE provides a free appropriate public education (FAPE) to all eligible students in all BIE-funded schools.

In response to serious concerns raised in 2005 by the U.S. Department of Education (Department) concerning the BIE's administration of Elementary and Secondary Education Act (ESEA) and IDEA programs, the Department of the Interior (Interior) developed the PIAP. The PIAP is Interior's plan for meeting the statutory requirements set forth in ESEA and IDEA for properly managing Federal funds, improving the achievement levels of Indian students, and meeting the responsibilities for accountability that ESEA and IDEA have established. The BIE has been submitting quarterly reports to the Department on its progress in implementing the PIAP, and the BIE and the Department have been meeting quarterly to discuss the BIE's progress in implementing the PIAP's corrective actions.

Because of the lack of satisfactory progress implementing the PIAP, the Department placed special conditions on Interior's receipt of all FFY 2007 and FFY 2008 ESEA and IDEA funds the Department provided to Interior. As part of the special conditions, the Department imposed requirements regarding further PIAP reporting and submission of supporting documentation that would enable Interior to demonstrate full compliance with the requirements of ESEA and IDEA. In FFY 2009 and FFY 2010, OSEP imposed program specific special conditions on the grant award under Part B of the IDEA, because the BIE had not completed all of the corrective actions contained in Section C of the PIAP.

At this time, the BIE has not documented completion of all of the corrective actions contained in Section C of the 2010-2011 PIAP. Specifically, the BIE has not been able to demonstrate that 100% of the findings of noncompliance are corrected within one year of identification (Milestone C.4.1.4). Therefore, the BIE has not demonstrated full compliance with the requirements in IDEA sections 611(h)(2)(A) and (F), 612(a)(11) and 616; 34 CFR §§300.149, 300.600, 300.708 and 300.716; 20 U.S.C. 1232d(b)(3)(E); and OSEP Memorandum 09-02, dated October 17, 2008 (OSEP Memo 09-02), to ensure timely correction of noncompliance.

2. Nature of the Special Conditions

Based on its review of the BIE's quarterly report on Section C of the PIAP for the quarter ending March 31, 2011, OSEP has determined that it is necessary to impose the following special conditions.

- A. Final Report on Section C of the 2010-2011 PIAP:** The BIE must submit to the Department by July 31, 2011, its final report on Section C of the PIAP for the 2010-2011 school year. This report covers April 1, 2011 through June 30, 2011. The report must contain (a) the status of each task, subtask and milestone scheduled to be completed, (b) the BIE's supporting documentation regarding completion of these tasks, subtasks and milestones, including an explanation of any delays and expected completion dates for all unimplemented actions, and (c) other data or documentation as the Department may request in order to verify the completion of tasks, subtasks and milestones.
- B. Revisions to Section C of the 2011-2012 PIAP:** The subtasks, milestones, and performance metrics are being revised to better align with the State Performance Plan (SPP) and Annual Performance Report (APR) and to reflect the current status of BIE's general supervisory system. After discussion between OSEP and BIE staff, Section C of the 2011-2012 PIAP will be revised to include the following subtasks, milestones, and performance metrics:

Subtask C.4.1: Implement Special Education Integrated Monitoring Process.

Milestone C.4.1.1: Identify findings of noncompliance using all components of BIE's system of general supervision, including findings identified through on-site monitoring, self-assessments, the Indian Student Equalization program (ISEP) verification process, the BIE's database, fiscal monitoring, complaints, and due process hearings.

Performance Metric: Report the number of findings identified through all components of the BIE's general supervision system.

Milestone C.4.1.2: Ensure findings of noncompliance are corrected as soon as possible, and in no case later than one year from identification.

Performance Metric: Report the number of findings corrected as soon as possible, and in no case later than one year from identification.

Milestone C.4.1.3: Verify that each school with noncompliance: (1) is correctly implementing the specific regulatory requirements (i.e., achieved 100% compliance) based on a review of updated data such as data subsequently collected through on-site monitoring or a BIE data system; and (2) has corrected each individual case of noncompliance, unless the

child is no longer within the jurisdiction of the school, consistent with OSEP Memorandum 09-02, dated October 17, 2008 (OSEP Memo 09-02).

Performance Metric: Describe actions taken to verify that each school with noncompliance: (1) is correctly implementing the specific regulatory requirements (i.e., achieved 100% compliance) based on a review of updated data such as data subsequently collected through on-site monitoring or a BIE data system; and (2) has corrected each individual case of noncompliance, unless the child is no longer within the jurisdiction of the school, consistent with OSEP Memo 09-02.

Milestone C.4.1.4: Take action if school does not correct noncompliance in a timely manner.

Performance Metric: Describe actions taken, including technical assistance and enforcement actions, if a school does not correct noncompliance in a timely manner.

Subtask C.4.2: Implement fiscal monitoring system to ensure that BIE-operated schools and tribally-operated schools are ensuring the appropriate use of IDEA Part B funds.

Milestone C.4.2.1: Issue Fiscal Monitoring Reports.

Performance Metric: Provide copies of fiscal monitoring reports issued to schools.

Milestone C.4.2.2: Ensure timely correction of findings of noncompliance identified in fiscal monitoring reports.

Performance Metric: Report the number of fiscal findings of noncompliance timely corrected, the number of fiscal findings of noncompliance corrected more than one year after the State's identification of noncompliance and provide evidence of correction.

C. Continued Implementation of Section C of the PIAP and 2011-2012 Reporting Requirements:

Continued Implementation: The BIE must continue to implement Section C of the PIAP for the summer term of 2011 and school year 2011-2012 until all corrective actions have been implemented. To ensure progress, the BIE must provide the Department with quarterly progress reports, which will be due to the Department 30 days after the end of each quarter. Each quarterly report will contain:

- (a) a description of activities and progress for each milestone, as described in the performance metric, during the reporting period;
- (b) the status of each milestone scheduled to be completed during the reporting period along with specific completion dates for all tasks, subtasks, and key milestones;
- (c) supporting documentation regarding completion of the milestones, including explanation of any delays and expected completion dates for all unimplemented actions;
- (d) updates to ensure that progress for previously completed tasks, subtasks and milestones is sustained; and
- (e) other data or documentation as the Department may request in order to verify the completion of tasks, subtasks and milestones.

Required Documentation to Verify Completion of Certain Milestones: In order to demonstrate completion of Milestones in Section C of the PIAP, the BIE must include the following information:

Milestone C.4.1.1: Identify findings of noncompliance using all components of BIE's system of general supervision, including findings identified through on-site monitoring, self-assessments, the Indian Student Equalization program (ISEP) verification process, the BIE's database, fiscal monitoring, complaints, and due process hearings.

- (a) In the first quarterly report for the 2011-2012 PIAP, due October 31, 2011, the BIE must provide the number of findings of noncompliance identified in FFY 2010 (July 1, 2010 through June 30, 2011).
- (b) In the second quarterly report for the 2011-2012 PIAP, due January 31, 2012, the BIE must provide the number of findings of noncompliance identified from July 1, 2011 through December 31, 2011.
- (c) In the third quarterly report for the 2011-2012 PIAP, due April 30, 2012, the BIE must provide the number of findings of noncompliance identified from January 1, 2012 through March 31, 2012.

Milestone C.4.1.2: Ensure findings of noncompliance are corrected as soon as possible, and in no case later than one year from identification.

- (a) In the fourth quarterly report for the 2010-2011 PIAP, due July 31, 2011, the BIE must provide: (1) updated data on the status of correction of 30 findings of noncompliance identified in FFY 2008 that the BIE reported were not corrected under Indicator 15 in the FFY 2009 APR.

- (b) In the first quarterly report for the 2011-2012 PIAP, due October 31, 2011, the BIE must provide updated data on the status of correction on any of the 30 findings of noncompliance identified in FFY 2008 that were not reported as corrected in the fourth quarterly report for the 2010-2011 PIAP, submitted on July 31, 2011.
- (c) In lieu of reporting in the second quarterly report for the 2011-2012 PIAP, due January 31, 2012, the BIE must report in the FFY 2010 APR, due February 1, 2012, as required in the FFY 2009 SPP/APR Response Table under Indicator 15. In its response to Indicator 15, the BIE must:
 - (i) provide information from the fourth quarterly report for the 2010-2011 PIAP and the first quarterly report for the 2011-2012 PIAP and updated information on the status of correction of all remaining uncorrected findings of noncompliance identified in FFY 2008;
 - (ii) report the number of findings of noncompliance identified through all components of the BIE's general supervision system in FFY 2009 (July 1, 2009 through June 30, 2010);
 - (iii) report the number and percent of findings included in (ii) for which the BIE verified the noncompliance was corrected as soon as possible but in no case later than one year after the BIE's identification of the noncompliance;
 - (iv) report the number of findings included in (ii) for which the BIE verified the noncompliance was corrected more than one year after the BIE's identification of the noncompliance;
 - (v) provide a description of the actions taken to verify the correction of the noncompliance to ensure that each school with noncompliance identified in FFY 2009: (1) is correctly implementing the specific regulatory requirements (i.e., achieved 100% compliance) based on a review of updated data such as data subsequently collected through on-site monitoring or a BIE data system; and (2) has corrected each individual case of noncompliance, unless the child is no longer within the jurisdiction of the school, consistent with OSEP Memo 09-02;

(vi) provide a description of the actions, including technical assistance and enforcement actions, the BIE has taken to address any remaining findings of noncompliance reported in (i) and (ii) that were not corrected; and

(vii) address all issues identified in OSEP's June 20, 2011 response to the BIE's FFY 2009 APR submission related to Indicator 15 and this Special Condition.

(d) In the third quarterly report for the 2011-2012 PIAP, due April 30, 2012, the BIE must provide updated information on the status of correction of all remaining uncorrected findings of noncompliance identified in FFY 2008 and/or FFY 2009.

Milestones C.4.1.3 and C.4.1.4: Verify correction of noncompliance consistent with OSEP Memo 09-02 and take action if school does not correct noncompliance in a timely manner.

- (a) In the first quarterly report for the 2011-2012 PIAP, due October 31, 2011, for each of the 30 findings of noncompliance identified in FFY 2008 reported as corrected, the BIE must provide a description of the actions taken to verify that each school with noncompliance: (1) is correctly implementing the specific regulatory requirements (i.e., achieved 100% compliance) based on a review of updated data such as data subsequently collected through on-site monitoring or a BIE data system; and (2) has corrected each individual case of noncompliance, unless the child is no longer within the jurisdiction of the school. The BIE must also provide a description of the actions taken, including technical assistance and enforcement actions, in schools that have uncorrected findings of noncompliance identified in FFY 2008.
- (b) In lieu of reporting in the second quarterly report for the 2011-2012 PIAP, due January 31, 2012, the BIE must report in the FFY 2010 APR, due February 1, 2012, as required in the FFY 2009 SPP/APR Response Table under Indicator 15.
- (c) In the third quarterly report for the 2011-2012 PIAP, due April 30, 2012, for each of the remaining uncorrected findings of noncompliance identified in FFY 2008 and/or FFY 2009 reported as corrected, the BIE must provide a description of the actions taken to verify that each school with noncompliance: (1) is correctly implementing the specific regulatory requirements (i.e., achieved 100% compliance) based on a review of updated data such as data subsequently collected through on-site monitoring or a BIE data system; and (2) has corrected each individual case of noncompliance, unless the child is no longer within the jurisdiction

of the school. The BIE must also provide a description of the actions taken, including technical assistance and enforcement actions, in schools that have uncorrected findings of noncompliance identified in FFY 2008 and/or FFY 2009.

Milestones C.4.2.1 and C.4.2.2: Issue fiscal monitoring reports and ensure timely correction of findings of noncompliance identified in fiscal monitoring reports.

- (a) For each quarterly report, the BIE must report on the actions, as described in the performance metric, it took during the reporting period to complete the milestone.

3. Evidence Necessary for Conditions To Be Removed

The Department will remove the Special Conditions if, at any time prior to the expiration of the grant year, the BIE provides documentation, satisfactory to the Department, that it has fully met the requirements and conditions set forth above, which require the BIE to submit data demonstrating compliance with the requirements in IDEA sections 611(h)(2)(A) and (F), 612(a)(11) and 616; 34 CFR §§300.149, 300.600, 300.708 and 300.716; 20 U.S.C. 1232d(b)(3)(E); and OSEP Memo 09-02 to ensure timely correction of noncompliance.

4. Method of Requesting Reconsideration

The BIE can write to OSEP's Director, Melody Musgrove, Ed.D, at the address below, if it wishes the Department to reconsider any aspect of these Special Conditions. The request must describe in detail the changes to the Special Conditions sought by the BIE and the reasons for those requested changes.

U.S. Department of Education
Office of Special Education and Rehabilitative Services
Attn: Melody Musgrove
400 Maryland Avenue, SW
Washington DC 20202-2500

5. Submission of Reports

The BIE must submit all reports required under the Special Conditions. The quarterly reports for Section C of the PIAP should be submitted to:

Matthew Schneer
U.S. Department of Education
Office of Special Education and Rehabilitative Services
550 12th Street, SW, Room 4169
Washington, DC 20202

And

Susan Benbow
U.S. Department of Education
Risk Management Services
Office of the Secretary
550 12th Street, SW, Room 7103
Washington, DC 20202